Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1976

No. .....

76-1370

MARCEL R. METHOT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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No. .....

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UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

May it Please the Court:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

CITATIONS TO OPINIONS BELOW

The judgment of the Court of Appeals is not yet reported. It is set forth in Appendix "A" to this petition (Appendix p. 1).

The order of the Court of Appeals denying petitioner's petition for rehearing is set forth in Appendix "B" to this petition (Appendix p. 2). It was not reported.

The judgment of the United States District Court for the Central District of California is set forth in Appendix "C" to this petition (Appendix p. 2). It was not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on January 31, 1977 (Appendix "A," p. 1). The order of the Court of Appeals denying petitioner's petition for rehearing was entered on March 8, 1977 (Appendix "B," p. 2). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether petitioner's conviction for failure to file a federal income tax return under Section 7203 of the Internal Revenue Code, based expressly upon his receipt of a government form letter which could not have altered his then-existing good faith belief in his compliance with the law, was so devoid of evidentiary support as to be invalid under the Due Process Clause of the Fourteenth Amendment?

STATUTES INVOLVED

Petitioner was convicted of failure to file a return under Section 7203 of the Internal Revenue Code, which section is set forth in Appendix "D" hereto (Appendix p. 4).

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> " . . . nor shall any state deprive any person of life, liberty, or property, without due process of law, ... "

STATEMENT OF THE CASE

A. Nature of Case and Disposition in Court Below.

Petitioner, Marcel R. Methot, was charged in an information filed April 14, 1975, with two identical counts of failure to file income tax returns for the years 1970 and 1971, in violation of Section 7203 of the Internal Revenue Code.

Following a trial without a jury in the United States District Court for the Central District of California (where jurisdiction was based on 18 U.S.C. § 3231), petitioner was acquitted on January 23, 1976 of count one of the information concerning the filing of his income tax return for 1970, but he was found guilty under count two of failure to file his return for 1971.

The United States Court of Appeals for the Ninth Circuit affirmed petitioner's conviction in an opinion filed January 31, 1977. Petitioner's petition for rehearing

was denied by the same court, in an order filed March 8, 1977. Throughout these proceedings, petitioner has been free under his personal bond, and he is presently free.

B. Statement of Facts.

During 1970, petitioner, Marcel R. Methot, became increasingly concerned about the constitutionality of the federal monetary and taxation systems. Petitioner does not agree that Federal Reserve Notes which are not redeemable in gold or silver qualify as dollars under federal constitutional law (R.T. 418)[1].

Petitioner was advised by counsel that if he filed a return containing sufficient financial information from which a tax could be computed, it would be a valid return under the Internal Revenue Code (R.T. 476).

Relying on this advice from counsel, petitioner listed on his income tax returns for the years 1970 and 1971 only the silver coins he had received as income. Petitioner was aware the Internal Revenue Service considered Federal Reserve Notes to be dollars for tax purposes. Having listed only silver coins on his income tax returns, petitioner anticipated a dispute with the Service over the amount of tax due, in which event he expected to raise the constitutional issues (R.T. 421-22, 438-39). Yet, in relying on advice of counsel, petitioner did believe he was fulfilling the Internal Revenue Code requirements concerning the filing of returns (R.T. 430).

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[1] As used herein, "R.T." followed by numbers refers to the pages of the Reporter's Transcript.

The District Court held that the tax returns (virtually identical in form) filed by petitioner for 1970 and 1971 were not valid returns within the meaning of the Internal Revenue Code (R.T. 519). Yet, the court acquitted the petitioner on count one of the information, relating to petitioner's return for 1970, declaring that "the court has a reasonable doubt on the question whether the defendant's failure to file a [valid] tax return for the year 1970, on or before April 15, 1971, was due to his good faith misunderstanding of the requirements of the law" (R.T. 520).

From the time he filed his 1970 return until he filed his virtually identical 1971 return, the petitioner received but one communication from the Internal Revenue Service: a letter received on or about December 1, 1971. The District Court held that "[I]n light of that letter the Court is satisfied beyond a reasonable doubt that the defendant's subsequent failure to file returns which complied with the law was not due to a good faith misunderstanding of the requirements of the law," and therefore found the petitioner guilty of count two, relating to the 1971 return (R.T. 522).

During 1971, the Internal Revenue Service received over 100 "protest" income tax returns at the Ogden, Utah Service Center, containing only a name, address and social security number (R.T. 191). The Service responded to these returns by sending out form letters. Inexplicably, the letter petitioner received was such a form letter. It never referred to the Form 1040 filed by the petitioner for the year 1970. (Government Exhibit 58.) Rather, the form letter generally informs those taxpayers whose returns contained name, address and social security number *only*—with *no financial or income information*—that such returns were

not valid under the Internal Revenue Code. (Government Exhibit 58.) The petitioner already knew this, as his attorney had previously advised him of this law. This knowledge is what precipitated petitioner's inclusion on his returns of his income from silver from which a tax could have been computed. (R.T. 415-16.)

The petitioner promptly returned a letter to the Internal Revenue Service, suggesting that a copy of his return be obtained from the Ogden Service Center, since he believed it to be a valid return, in complete compliance with the dictates of the government's form letter (Exhibit 58). Petitioner received no response to this letter from the Internal Revenue Service prior to the filing of his return for the year 1971, which return is the basis for count two of the information.

REASONS FOR GRANTING THE WRIT

It is a well established principle of this Court that to convict and punish a man without evidence of his guilt is a violation of due process. *Thompson v. Louisville,* 362 U.S. 199,206 (1960); *Schware v. Board of Bar Examiners,* 353 U.S. 232, 246-47 (1957); *United States ex rel. Vajtauer v. Comm'r,* 273 U.S. 103, 106 (1927).

In *Schware*, the New Mexico Supreme Court affirmed the New Mexico Board of Bar Examiners' denial of petitioner's application requesting permission to take a bar exam. The reason given for such denial by the Board was that petitioner had not demonstrated good moral character, primarily due to his past membership in the Communist Party.

Nothing in the record in *Schware* tended to demonstrate

that the nature of petitioner's membership in the Communist Party had been other than political faith in a political party. There was no indication that he had ever engaged in conduct to overthrow the United States Government or had ever advocated such.

This Court held that for the New Mexico Supreme Court to have placed such emphasis upon Schware's prior membership in the Communist Party without first having considered and examined the nature of Schware's involvement was arbitrary and unreasonable. Such improper use of evidence by the New Mexico Supreme Court led this Court to declare:

> "There is no evidence in the record which rationally justifies a finding that Schware was morally unfit to practice law." (353 U.S. at 246-47.)

Consequently, Schware's liberty had been deprived without due process of law.

In the present case, petitioner was charged by information with two counts of failure to file income tax returns for the years 1970 and 1971, in violation of Section 7203 of the Internal Revenue Code. The returns filed by petitioner for the respective years were virtually identical. Petitioner filed the returns on advice of counsel, intending to satisfy the filing requirements of the Internal Revenue Code. (R.T. 430.)

Though the District Court held that petitioner's returns filed for the years 1970 and 1971 were invalid under the Internal Revenue Code, petitioner was acquitted on count one of the information due to his good faith reliance on advice of counsel (R.T. 520). The presence of a good faith

reliance on the advice of counsel negates the element of willfullness necessary for a conviction under Section 7203. *Williamson v. United States,* 207 U.S. 425, 453 (1908).

Between the time of filing his return for 1970 and the virtually identical return for 1971, petitioner received but one letter from the Internal Revenue Service. It was on the basis of having received this letter, alone, that the District Court convicted petitioner on count two of the information, declaring that the letter had "dissipated any good faith misunderstanding of the requirements of the law defendant may have previously entertained" (R.T. 521).

It is manifestly clear that the letter received by petitioner contains no evidence which could have in any way altered petitioner's then-existing good faith belief in his compliance with the law.

The letter contained two pieces of information. It was a form letter, which declared that returns containing name, address and social security number *only*–with no financial or income information–were invalid. Petitioner was aware of this fact. That is why he had carefully included on his returns the silver coins he had received as income (R.T. 415, 418, 419).

The letter also referred to the then recent case of *United States v. Porth,* 426 F.2d 419 (10th Cir. 1970), which had declared:

> "A taxpayer's return which does not contain any information relating to the taxpayer's income from which a tax can be computed is not a return within the meaning of the Internal Revenue Code or the regulations adopted by the Commissioner." (Exhibit 58.)

Petitioner had been advised of the *Porth* decision by counsel prior to filing his returns for 1970 and 1971, and it was with the intention of complying with *Porth* that petitioner had included on his returns sufficient income information from which a tax could be computed (R.T. 475-76, 415, 419).

To have utilized this single letter as the sole basis for convicting petitioner on count two of the information, without analyzing it to determine whether the information disclosed could have in any way altered petitioner's good faith belief in his compliance with the law, was as much an error as the New Mexico Supreme Court's utilization in *Schware* of prior membership in the Communist Party without first having considered the nature of such membership. Consequently, because the letter could not have altered petitioner's good faith belief, the record is void of any evidence which rationally justifies petitioner's conviction on count two of the information.

Therefore, the District Court's conviction of petitioner on count two of the information, and the Court of Appeals' affirmance, was arbitrary and unreasonable, with the result that petitioner's liberty and property have been denied without due process of law, contrary to the Fourteenth Amendment.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

DONALD N. BELVEAL

Attorney for Petitioner

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APPENDIX "A"

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

In the United States Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. MARCEL R. METHOT, Defendant-Appellant.

No. 76-1642.

[January 31, 1977]

Appeal from the United States District Court for the Central District of California

Before: ELY and WALLACE, Circuit Judges, and SOLOMON, District Judge.

Methot was convicted on one of two counts for failure to file income tax returns in violation of 26 U.S.C. § 7203. The primary issue was whether he was acting under a good faith belief that the form filed satisfied the requirements of law. The District Court found there was not a good faith belief and the record amply supports that finding.

Methot's claim of selective prosecution is clearly without merit. We also reject his claim that he in fact filed a "return." His argument pertaining to Federal Reserve Notes is foreclosed by *United States v. Wangrud*, 533 F.2d 495 (9th Cir. 1976).

AFFIRMED.

APPENDIX "B"

ORDER DENYING PETITION FOR REHEARING

In the United States Court of Appeals for the Ninth Circuit.

UNITED STATES OF AMERICA, Plaintiff-Appellee, vs. MARCEL R. METHOT, Defendant-Appellant.

No. 76-1642.

[March 8, 1977]

Before: ELY and WALLACE, Circuit Judges, and SOLOMON, District Judge.

The petition for rehearing is denied.

APPENDIX "C"

JUDGMENT OF THE UNITED STATES DISTRICT COURT

In the United States District Court for the Central District of California.

UNITED STATES OF AMERICA, vs. MARCEL R. METHOT.

No. CR-75-536-HP

[February 24, 1976]

On this 24th day of February, 1976 came the attorney for the government and the defendant appeared in person and by counsel, Michael J. Christianson.

IT IS ADJUDGED that the defendant upon his plea of not guilty and a finding of guilty as to count two, has been convicted of the offense of failure to file income tax returns in violation of 26 U.S.C. § 7203 as charged in count two of a two count information, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the imposition of sentence is suspended and the defendant is placed on probation for a period of three (3) years on the following terms and conditions: (1) That he obey all laws Federal, State, and Local; (2) That he comply with the rules and regulations of the probation officer, and (3) That he pay a fine to the United States in the sum of $10,000 in such installments as the probation officer shall prescribe.

The defendant was found not guilty as charged in count one of the information. IT IS ORDERED that the defendant's bond is exonerated.

HARRY PREGERSON
United States District Judge

APPENDIX "D"

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26 U.S.C. § 7203

Willful failure to file return, supply information or pay tax.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution. Aug. 16, 1954. c. 736, 68A Stat. 851.

STATE OF CALIFORNIA)
) ss.
County of Orange)

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and employed in the County of Orange, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is 326½ Main Street, Huntington Beach, California 92648 that on APRIL 5th, 1977, I served the within PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (Methot vs. United States of America) on the following named party by depositing three copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office in the City of Huntington Beach, California addressed to said party at the address as follows:

SOLICITOR GENERAL
U. S. Department of Justice
Washington, D. C. 20530

I declare under penalty of perjury that the foregoing is true and correct.

Executed on APRIL 5th, 1977, at HUNTINGTON BEACH, CALIFORNIA.

D. A. Standefer

Dean-Standefer, 326½ Main St., Huntington Beach, Ca. 92648
(714) 536-7161

No. 76-1370

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

MARCEL R. METHOT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1370

MARCEL R. METHOT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the evidence was insufficient to support his conviction for failure to file an income tax return.

After a bench trial in the United States District Court for the Central District of California, petitioner was convicted of willfully failing to file an income tax return for 1971, in violation of 26 U.S.C. 7203 (Tr. 520-522).[1] The trial court suspended imposition of sentence, placed him on probation for three years, and fined him $10,000 (C.T. 172-173). The court of appeals affirmed (Pet. App. A).

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[1] "Tr." refers to the trial transcript. "C.T." refers to the clerk's transcript

Prior to 1970, petitioner, a chiropractor, filed the usual income tax returns. For 1970 and 1971, however, petitioner filed Forms 1040 (Govt. Exs. 2, 3) that did not report as income any paper dollars or checks received by petitioner, but did list (on p. 4 of each form) certain silver coins (Tr. 418-419, 519). The 1971 form (Govt. Ex. 3) listed 6,500 silver quarters, 150 silver half dollars and 750 silver dimes (Tr. 477).[2] It was not clear from petitioner's listing of those coins whether he intended to report them as income. No computation reducing them to dollars was shown (Govt. Ex. 3, p. 4; Tr. 491). Moreover, the form did not show the number of personal exemptions, any business expenses, nonbusiness deductions, or tax credits, or any entries for income (Tr. 460). The district court found that the form did not disclose to the government facts material to the determination of petitioner's tax liability (Tr. 518), and that the form filed by petitioner was not a return (Tr. 519).

In December 1971, the Internal Revenue Service notified petitioner that the document he had filed on April 15, 1971, did not constitute a valid return for 1970 (Tr. 341-346, 521). References to statutory and case authorities were enclosed with this notice (Tr. 521). Petitioner was notified of the legal requirements concerning the filing of tax returns and warned that noncompliance would subject him to prosecution under 26 U.S.C. 7203, a copy of which was attached to the letter (Tr. 521). The letter

[2]Petitioner claims to believe (Pet. 4) that paper money is not taxable as income because it is not redeemable in gold or silver. But the courts have uniformly rejected this position. See, *e.g.*, *United States* v. *Daly*, 481 F. 2d 28, 30 (C.A. 8), certiorari denied, 414 U.S. 1064; *United States* v. *Wangrud*, 533 F. 2d 495 (C.A. 9), certiorari denied, October 4, 1976 (No. 75-1520); cf. *Norman* v. *B. & O. R. Co.*, 294 U.S. 240, 302-306.

requested petitioner to file a tax return for 1970 on or before January 3, 1972, but petitioner never filed a proper return for 1970 (*ibid.*).

On April 15, 1972, petitioner again filed a document, similar to the one filed a year earlier, in which he reported no income received by check or federal reserve notes (Tr. 518-519). One of petitioner's employees testified that on a busy day in 1971 petitioner's gross receipts would range between $250 and $500 (Tr. 280-281). The gross income of petitioner and his wife, computed by the Internal Revenue Service on the bank deposits method, was $54,310 for 1971 (Tr. 318). Since California is a community property state, the Service concluded that only half that amount, or $27,155, was attributable to petitioner (*ibid.*).

Petitioner argues (Pet. 6-9) that the evidence was insufficient to support the verdict. But it is well established that a Form 1040 that gives no information from which a tax can be computed is not a return within the meaning of the Internal Revenue Code. See, *e.g.*, *Automobile Club* v. *Commissioner*, 353 U.S. 180, 187-188; *United States* v. *Daly*, 481 F. 2d 28, 29 (C.A. 8), certiorari denied, 414 U.S. 1064; *United States* v. *Porth*, 426 F. 2d 519, 523 (C.A. 10), certiorari denied, 400 U.S. 824; 26 U.S.C. 6011(a); 26 C.F.R. 1.6011-1(b); 10 Mertens, *Law of Federal Income Taxation*, §55.22 (1976 ed.).[3] Moreover, after receiving

[3]Petitioner seeks to distinguish (Pet. 8-9) *Porth* on the ground that there no financial or income information was supplied on the return, whereas here petitioner "carefully included on his returns the silver coins he had received as income" (Pet. 8). But petitioner's Form 1040 was fatally defective on its face, not only because it was obvious that only a small minority of petitioner's patients would pay him in coins, but because the form shows no personal exemptions, business expenses, nonbusiness deductions, or tax credits. Indeed, it is not even clear that petitioner intended to report the silver coins

a warning letter from the Internal Revenue Service (Govt. Ex. 58), petitioner persisted in his course of conduct, failing to file a proper return for either 1970 or 1971. The court of appeals therefore correctly held that the record amply supports the district court's finding that petitioner was not acting under a "good faith belief that the form filed satisfied the requirements of law."[4]

Finally, petitioner claims (Pet. 4, 7-8, 9) that he relied in good faith on the advice of counsel, but the attorney he refers to (Tr. 469) is a well-known tax protestor who also has been convicted for failure to file income tax returns. See *United States* v. *Daly*, 481 F. 2d 28 (C.A. 8), certiorari denied, 414 U.S. 1064. The district court evidently concluded that petitioner had not relied upon Daly's advice in good faith. This factually based conclusion was reasonable. In view of his own prosecution, Daly was not a disinterested party upon whom a claim of reliance on counsel could be properly based. See *Bisno* v. *United States*, 299 F. 2d 711, 719-720 (C.A. 9), certiorari denied, 370 U.S. 952.

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as income. The form therefore was of no value at all in the computation of petitioner's liability, and the district court was amply justified in concluding (Tr. 519) that it does not constitute a return within the meaning of 26 U.S.C. 6011(a). *Schroeder* v. *Commissioner*, 291 F. 2d 649, 654 (C.A. 8); *National Contracting Co.* v. *Commissioner*, 105 F. 2d 488, 491 (C.A. 8); *Houston* v. *Commissioner*, 38 T.C. 486, 491; *Sanders* v. *Commissioner*, 21 T.C. 1012, 1018, affirmed, 225 F. 2d 629 (C.A. 10); cf. *Zellerbach Co.* v. *Helvering*, 293 U.S. 172, 180; *Florsheim Bros.* v. *United States*, 280 U.S. 453, 462.

[4]Petitioner relies (Pet. 7) upon the fact that he was acquitted on Count 1, which charged a failure to file a return for 1970. The acquittal on Count 1 was based on the trial court's conclusion that when petitioner filed the Form 1040 for 1970 on April 15, 1971, he may have had a good faith misunderstanding of the law's requirements (Tr. 521). The court determined that any such possible misunderstanding was eliminated by the Service's letter of December 1971, which petitioner received before filing his Form 1040 for 1971.

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

MAY 1977.